

Regular Session, 2009

SENATE BILL NO. 236

BY SENATOR N. GAUTREAUX

TAX/TAXATION. Requires the Department of Revenue to pay the same interest and penalty on late refunds that are charged for delinquent taxes. (7/1/09)

1 AN ACT

2 To amend and reenact R.S. 47:115(A)(3) and (C), 120.3(A), the introductory paragraph of
3 287.86(H), 287.445(B)(3), 287.657(A), (C), and (H), and 1624(A), relative to tax
4 refunds; to require the payment of certain interest rates and penalties on certain
5 refunds; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 47:115(A)(3) and (C), 120.3(A), the introductory paragraph of
8 287.86(H), 287.445(B)(3), 287.657(A), (C), and (H), and 1624(A) are hereby amended and
9 reenacted to read as follows:

10 §115. Refunds and credits

11 A. * * *

12 (3) To the extent that the aforesaid credit, together with other credits allowed
13 by law, is in excess of the employee's income tax liability for said taxable year, as
14 shown on an income tax return filed by such employee for that year, such
15 overpayment shall be considered as taxes erroneously paid to be credited or refunded
16 as herein provided. Such overpayment shall be credited to such person's estimated
17 or income tax liability for the succeeding taxable year unless such person shall claim

1 a refund therefor except that overpayment of one dollar or less shall be refunded or
2 credited only upon the receipt by the secretary of a written demand for such refund
3 from the taxpayer; however, the collector is authorized to consider any final return
4 showing an overpayment as a claim for refund. An overpayment shall bear no
5 interest if credit is given therefor; amounts refunded as overpayments shall bear
6 interest at the rate established pursuant to ~~R.S. 13:4202~~ **R.S. 47:1624** per year
7 computed from ninety days after the filing date of the final return showing the
8 overpayment, or from the due date of such final return, whichever is later, **plus any**
9 **penalty that may be due as provided for in R.S. 47:1624(A)(2).**

10 * * *

11 C. Other refunds and credits. To the extent a taxpayer's payments, together
12 with other credits allowed by law, is in excess of his income tax liability shown on
13 a return filed for the taxable year, such overpayment shall be considered as taxes
14 erroneously paid to be credited or refunded as herein provided. Such overpayment
15 shall be credited to the taxpayer's estimated or income tax liability for the succeeding
16 taxable year unless a claim for refund is made. Notwithstanding any provision of
17 this Subsection to the contrary, an overpayment of one dollar or less shall be
18 refunded or credited only upon the receipt by the secretary of a written demand for
19 such refund from the taxpayer. The secretary is authorized to consider any final
20 return showing an overpayment as a claim for refund. An overpayment shall bear
21 no interest if credit is given. Amounts refunded as overpayments shall bear interest
22 at the rate established pursuant to ~~R.S. 13:4202~~ **R.S. 47:1624** computed from ninety
23 days after the filing date of the final return showing the overpayment or from the due
24 date of the final return, whichever is later, **plus any penalty that may be due as**
25 **provided for in R.S. 47:1624(A)(2).** No interest on refunds shall be allowed if, the
26 secretary proves by clear and convincing evidence that a person has deliberately
27 overpaid a tax in order to derive the benefit of the interest allowed by this Section.
28 Payments of interest authorized by this Section shall be made from funds derived
29 from current collections of the tax to be refunded.

* * *

§120.3. Refunds and credits

A. An overpayment shall bear no interest if credit is given therefor. Amounts actually refunded as overpayments shall bear interest at the rate established pursuant to ~~R.S. 13:4202~~ **R.S. 47:1624** per year computed from ninety days after the filing date of the return showing the overpayment or from the due date of such return, whichever is later, **plus any penalty that may be due as provided for in R.S. 47:1624(A)(2).**

* * *

§287.86. Net operating loss deduction

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H. Interest on refunds. Any amount actually refunded as an overpayment resulting from the application of a net operating loss carryback, tentative or otherwise, shall bear interest at the rate provided in R.S. 47:1624, **plus any penalty that may be due as provided for in R.S. 47:1624(A)(2),** which shall be computed:

* * *

§287.445. Special adjustment for long-term contracts

* * *

B. Look-back method. The interest computed under the look-back method of this Subsection shall be determined as follows:

* * *

(3) Then, applying the rate of interest established by ~~R.S. 47:1624~~ **in R.S. 13:4202** to the overpayment or underpayment determined under Paragraph (2), **plus any penalty that may be due as provided for in R.S. 47:1624(A)(2).**

* * *

§287.657. Refunds and credits of overpayment of estimated income tax by corporations

A. An overpayment of estimated income tax shall bear no interest if credit is given therefor. Amounts actually refunded to the taxpayer as overpayments shall

1 bear interest at the rate established pursuant to ~~R.S. 13:4202~~ **R.S. 47:1624** per year
2 computed from ninety days after the filing date of the return showing the
3 overpayment or from the due date of such return, whichever is later, **plus any**
4 **penalty that may be due as provided for in R.S. 47:1624(A)(2).**

5 * * *

6 C. Interest at the rate established by ~~R.S. 47:1624~~ **in R.S. 13:4202** shall be
7 paid by a corporation on any underpayment of tax determined in accordance with
8 R.S. 47:287.445.

9 * * *

10 H. The secretary shall report monthly to the commissioner of administration
11 the total amount of refunds made each month. The secretary shall also report
12 quarterly to the Joint Legislative Committee on the Budget the total amount of
13 refunds made each quarter and shall specifically note when any refunds were not
14 paid within the time period provided for in Paragraph (D)(3) of this Section, ~~and the~~
15 **reason therefor, and any interest and penalty paid because of such delinquency.**

16 * * *

17 §1624. Interest on refunds or credits

18 A.**(1)** Notwithstanding any other provision of law to the contrary, on all
19 refunds or credits the secretary shall compute and allow as part of the refund or
20 credit, interest at ~~the an~~ annual rate ~~established in R.S. 13:4202~~ **of three percentage**
21 **points above the rate provided for in R.S. 9:3500(B)(1); provided that in no**
22 **event shall the interest rate exceed one and one-quarter percent per month and**
23 **for any fraction of a month. The interest shall be computed** from the date the
24 return was due, the date the first return for that tax period was filed, or the date the
25 tax was paid, whichever is later. An overpayment shall bear no interest if it is
26 credited to the taxpayer's account. No interest on refunds or credits shall be allowed
27 if, the secretary proves by clear and convincing evidence that a person has
28 deliberately overpaid a tax in order to derive the benefit of the interest allowed by
29 this Section. Payments of interest authorized by this Section shall be made from

funds derived from current collections of the tax to be refunded or credited.

(2)(a) In addition to the interest required to be paid as provided for in Paragraph (1) of this Subsection, a specific penalty shall be added to the amount of refund of tax, except for individual income tax, remitted to the taxpayer of five percent of the total refund due to the taxpayer if the department fails to provide the refund within thirty days of the time provided for in the law for making the refund, with an additional five percent added for each additional thirty days or fraction thereof during which the failure or delinquency continues, not to exceed twenty-five percent of the refund in the aggregate.

(b) In the case of a refund related to the individual income tax, a specific penalty shall be added to the amount remitted to the taxpayer of one-half of one percent of the total refund due to the taxpayer if the department fails to provide the refund within thirty days of the time provided for in the law for making the refund, with an additional one-half of one percent for each additional thirty days or fraction thereof during which the failure to remit the refund continues.

* * *

Section 2. The provisions of this Act shall be applicable to refunds due on and after July 1, 2009.

Section 3. This Act shall become effective on July 1, 2009; if vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on July 1, 2009, or on the day following such approval by the legislature, whichever is later.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Riley Boudreaux.

DIGEST

Present law requires interest to be added to the amount of tax due, computed from the statutory payment date of the tax until the tax is paid, if a taxpayer fails to pay a tax, or any portion thereof, on or before the day when it is required to be paid. The interest accrues at an annual rate of three percentage points above the rate provided for in R.S. 9:3500(B)(1) - that is, the "judicial interest rate," which is 3.5 % above the "discount rate" approved on the first business day of October of the previous year, but in no event to exceed one and one-quarter percent per month and for any fraction of a month.

Present law requires the payment of a penalty if a taxpayer fails to make and file any return before the time that the return becomes delinquent or when any taxpayer fails to timely remit

the total amount of tax that is due. The penalty is 5% of the total tax due on the return if the failure or delinquency is for not more than 30 days, with an additional 5% for each additional 30 days or fraction thereof, not to exceed 25% of the tax.

In the case of individual income tax, if the full amount of tax due on the return is not paid on or before the due date, the penalty is one-half of one percent of the unremitted tax if the failure to remit continues for not more than 30 days, with an additional one-half of one percent for each additional 30 days or fraction during which the failure to remit continues.

Present law requires the payment of interest on a refund at the judicial rate and provides no penalty on the Department of Revenue if a refund is late.

Proposed law requires the Department of Revenue to pay the same interest on all refunds or credits that is charged for delinquent taxes, that is three percentage points above the rate provided for in R.S. 9:3500(B)(1), but not to exceed one and one-quarter percent per month and for any fraction of a month. In addition, requires the same penalty that it charges on delinquent taxes to be added to late refunds: that is, a penalty, except for individual income tax, of 5% of the total refund due to the taxpayer if the department fails to provide the refund within 30 days of the time provided for in the law for making the refund, with an additional 5% for each additional 30 days or fraction thereof during which the failure or delinquency continues, not to exceed 25% of the refund. For individual income tax refunds, a penalty of one-half of one percent of the total refund due to the taxpayer if the department fails to provide the refund within thirty days of the time provided for in the law for making the refund, with an additional one-half of one percent for each additional thirty days or fraction thereof during which the failure to remit the refund continues.

Effective July 1, 2009, applicable to refunds due after that date.

(Amends R.S. 47:115(A)(3) and (C), 120.3(A), 287.86(H)(intro para), 287.445(B)(3), 287.657(A), (C), and (H), and 1624(A))